IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 339 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JYOTSNA M. DESAI @ JYOTSNA M. CHHAYA & 6 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HJ NANAVATI for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/06/2006

ORAL JUDGMENT

1. The petitioner is a retired Assistant Teacher. The petitioner had joined the service at grant in aid school in the year 1988 as Assistant Teacher in the

Higher Secondary School. She had multiple health problems due to which it was not possible for the petitioner to continue in active service. Along with medical certificate dated 4/8/98 the petitioner requested for being relieved on health grounds with invalid pension. This application was accepted by the authorities on 8/10/1998. The petitioner, therefore, was entitled to receive pension and other benefits since she was relieved from service w.e.f. 31/10/1998 on medical grounds. The benefits of the petitioner were however not released by the respondents. The case of the authorities was that she had to obtain a certificate from a competent medical authority in this regard. However, the Government authorities, as well as, the Chief Medical Officer of Civil Hospital were not clear as to which authority would be competent to issue such certificate. The petitioner was tossed between the Government Authorities, Chief Medical Officer and Medical Board without being examined physically for the purpose of granting such certificate. In fact there is detailed correspondence produced on record between the authorities which would suggest that it was primarily on account of ambiguity on the part of respondents as to which authority should grant such a certificate that the petitioner could not present herself for medical check up and obtain appropriate certificate. Eventually the petitioner was examined by the Medical Board on 30th April, 2003 and a certificate in this regard was issued. In fact the petitioner had to approach this Court to break the

stale mate and only upon the direction of the Court that the Medical Board could examine the petitioner. Eventually the petitioner's pension was sanctioned and gratuity was also released. The petitioner was paid gratuity amount of Rs. 44,530/- in December, 2003 She was also paid arrears of pension to the tune of Rs. 1,15,000/- also around the same time. The petitioner has, therefore, prayed for interest in delayed payment of above mentioned pensionary benefits.

2. It is difficult to understand why the finalization of pension of the petitioner should have taken such a long time. When the petitioner sought permission to retire on medical ground, the authorities could have even before accepting such a request insisted upon a medical certificate from the appropriate authority. It is doubtful whether once having accepted the request for retirement on medical ground the pension entitlement to the petitioner could be made dependent on such a certificate being obtained later on. At the outset the petitioner could have been put to notice that until she proves her incapacity to continue in service, she will not be entitled to retire with pension since she has not put in sufficient years of qualifying service. However, once the request was accepted it is doubtful whether the respondents could have insisted upon a medical certificate in this regard. Be that as it may, the petitioner was always ready and willing to present herself for medical examination before the

appropriate medical authority. It was the confusion within the ranks of the government which did not permit the petitioner to present herself before the appropriate authority. Between the DEO and the Medical Board a confusion prevailed till this Court intercepted and directed the Medical Bard to check the health condition of the petitioner. Eventually, the medical certificate was obtained. The delay caused in releasing the pensionary benefits cannot be attributed to the petitioner in any manner. The respondents, therefore, must bear the interest on the delayed payment.

3. Considering the above aspects of the matter, it is directed that the delayed payment of pension will carry simple interest at the rate of 10% p.a. from the date the same became due and payable till its actual payment. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. Rule made absolute. No costs.

(Akil Kureshi, J.)

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